

SB2527



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2527

Introduced 2/15/2008, by Sen. Kwame Raoul

SYNOPSIS AS INTRODUCED:

15 ILCS 305/5.15 new

Amends the Secretary of State Act. Provides that an attorney (or an attorney's representative or guardian) who certifies that he or she has been unable to locate a testator after a diligent search may deposit the testator's will with the Secretary of State. Requires the Secretary of State to: index, store, and perform other duties with respect to deposited wills; deliver the will to the testator or a designee or to a person specified in a court order; deliver the will to a court upon being notified of the death of the testator; and respond to inquiries regarding the will under specified circumstances. Contains provisions regarding fees, destruction of wills, immunity, and other matters.

LRB095 16802 RCE 42839 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Secretary of State Act is amended by adding
5 Section 5.15 as follows:

6 (15 ILCS 305/5.15 new)

7 Sec. 5.15. Deposit of wills.

8 (a) Definitions. As used in this Section:

9 "Depositor" means an attorney licensed or formerly
10 licensed to practice in the State of Illinois, the attorney's
11 representative, the guardian for the attorney, or the personal
12 representative of the attorney's decedent's estate.

13 "Testator" means a person who executed a will, other than
14 as a witness or official to whom acknowledgment of signing was
15 given.

16 "Will" refers to an original:

17 (1) will;

18 (2) codicil;

19 (3) will and one or more codicils;

20 (4) trust; or

21 (5) trust and one or more trust amendments.

22 (b) Deposit of wills. A depositor, as defined in subsection

23 (d), may deposit a will with the Secretary of State if the

1 depositor certifies in writing to the Secretary of State that
2 the depositor is unable to locate the testator after a diligent
3 search. This Section applies whether it is known or unknown
4 whether the testator is living.

5 (c) Assumptions. The Secretary of State may assume, without
6 inquiring into the facts, that the depositor has first made a
7 diligent search for the testator.

8 (d) Fee. The Secretary of State shall collect a fee of \$25
9 for each deposit of a will. The Secretary of State shall not
10 collect a separate fee for additional documents concurrently
11 deposited in relation to a single testator or for a single
12 joint will prepared for a husband and wife.

13 (e) Duty of Secretary of State upon receipt. Upon receipt
14 of a will under this Section, the Secretary of State shall:

15 (1) provide the depositor with a receipt for the will,
16 which receipt shall contain the information designated on
17 the envelope in accordance with paragraph (3) of this
18 subsection;

19 (2) place the will or wills deposited concurrently in
20 relation to a single testator in one envelope and seal the
21 envelope securely in the presence of the depositor or
22 depositor's agent;

23 (3) designate on the envelope:

24 (A) the date of deposit;

25 (B) the name, address, and telephone number of the
26 depositor;

1 (C) the name and last known address of the
2 testator;

3 (D) at the depositor's option, any and all of the
4 following information:

5 (i) alternate names by which the testator may
6 have been known;

7 (ii) the testator's birth date, and

8 (iii) the last 4 digits of the testator's
9 Social Security number; and

10 (E) with respect to each document enclosed:

11 (i) a short description of the document,
12 including, if shown, its date of execution; and

13 (ii) the number of pages in the document; and

14 (4) index the will alphabetically by the name of the
15 testator, and by the alternate names set forth by which the
16 testator may have been known.

17 (f) Status as a public record. An envelope and will
18 deposited under this Section are not public records.

19 (g) Duty of Secretary of State during testator's lifetime.
20 During the testator's lifetime, the Secretary of State shall:

21 (1) keep the envelope containing the will sealed; and

22 (2) deliver the envelope to:

23 (i) the testator;

24 (ii) a person authorized, in a writing signed by
25 the testator and notarized, to receive the envelope; or

26 (iii) a person, entity, court, or government

1 agency authorized to receive the envelope pursuant to
2 an order entered by a court of competent jurisdiction.

3 (h) Duty of Secretary of State upon notification of death
4 of testator. If the Secretary of State has custody of the will
5 after the death of the testator and is notified of the death of
6 the testator by means of a certified copy of the testator's
7 death certificate or by a certified copy of an order of court
8 determining the testator to be deceased, upon receipt of
9 payment of a retrieval fee in the amount of \$10, the Secretary
10 of State shall deliver the sealed will envelope to the court
11 that has jurisdiction of the administration of the decedent's
12 estate within 30 days after receiving notification of the
13 testator's death. If there is any doubt as to whom a will
14 should be delivered, the Secretary of State, or any other
15 person, may apply to the circuit court having jurisdiction over
16 the testator's estate for directions as to whom the Secretary
17 of State should deliver the will.

18 (i) Duties of Secretary of State upon inquiry. Upon inquiry
19 by a person identified in paragraph (2) of subsection (g), or
20 upon inquiry of any person presenting a certified copy of the
21 testator's death certificate or a certified copy of an order of
22 a court determining the testator to be deceased, the Secretary
23 of State shall inform the person whether the name of the
24 relevant testator appears in the Secretary of State's index of
25 wills. For the purposes of this subsection, the Secretary of
26 State need not be certain that the testator is the one being

1 inquired about, but may release that information if it is
2 possible that the testator is that one.

3 (j) Destruction of will. The Secretary of State may destroy
4 a will deposited under this Section if:

5 (1) the Secretary of State has not received notice of
6 the death of the testator; and

7 (2) at least 100 years have passed since the date the
8 will was deposited.